

## Message Text

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ORIGIN L-03

INFO OCT-01 IO-12 ADP-00 PM-09 NSC-10 SS-15 RSC-01 CIAE-00

INR-10 NSAE-00 DODE-00 MBFR-03 ACDA-19 GAC-01 PRS-01

AEC-11 AF-10 ARA-11 EA-11 EUR-25 NEA-10 SSO-00 NSCE-00

USIE-00 INRE-00 RSR-01 /164 R

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P R 042223 Z MAY 73

FM SECSTATE WASHDC

TO USMISSION GENEVA PRIORITY

INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 085361

E. O. 11652: GDS

TAGS: PFOR, UN

SUBJECT: DEFINITION OF AGGRESSION COMMITTEE: LEGAL

USES OF FORCE

REF: ( A ) GENEVA 2033; ( B ) GENEVA 2045

DEPT HAS TACTICAL PROBLEMS WITH LANGUAGE DISCUSSED  
IN 6- POWER GROUP RE LEGAL USES OF FORCE.

IT IS NOT CLEAR FROM REFTELS WHETHER DEL HAS SOUGHT TO  
OBTAIN AGREEMENT EVEN AMONG THE 6 POWERS ON A GENERAL  
SAVING CLAUSE, I. E., WHICH WOULD OMIT FROM ACTS CON-  
STITUTING AGGRESSION THOSE " CARRIED OUT UNDER CIRCUMSTANCES  
AND IN A MANNER WHICH RENDERS THE ACT A LAWFUL USE OF FORCE  
UNDER THE CHARTER" IN WHICH CASE, THE DEL, AS STATED  
IN THE POSITION PAPER, WOULD SEEK TO ELIMINATE SUCH  
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SPECIFIC REFERENCES TO SELF- DEFENSE AND OTHER SITUATIONS  
IN WHICH USE OF FORCE IS LEGAL. EVEN IN ABSENCE OF 6-  
POWER AGREEMENT ON THE ABOVE SAVING CLAUSE, IT IS NOT  
CLEAR WHETHER DEL IS CONTINUING TO SUPPORT ALTERNATIVE  
1 OF THE WG REPORT ( P. 16) " NOTHING IN THIS DEFINITION  
SHALL BE CONSTRUED AS ENLARGING OR DIMINISHING IN ANY WAY  
THE SCOPE OF THE PROVISIONS OF THE CHARTER CONCERNING CASES  
IN WHICH THE USE OF FORCE IS LAWFUL."

DEPT CONTINUES TO PREFER EITHER SAVING CLAUSE TO

THE SPECIFICATION OF SELF- DEFENSE AND OTHER LEGAL USES OF  
FORCE AND REGARDS SUCH A SAVING CLAUSE AS SUFFICIENT.  
WE NOTE IN PARA 4 OF REFTEL ( B) THAT SPECIFICATION OF  
SELF- DEFENSE IN GIVEN CONTEXT CARRIES POSSIBLE IMPLICATION  
THAT THERE IS NO RIGHT OF SELF- DEFENSE AGAINST AN ACT NOT  
INCLUDED IN THE LIST. USE OF EITHER SAVING CLAUSE WITHOUT  
PRIOR OR ADDITIONAL MENTION OF SELF- DEFENSE, ETC.,  
WOULD OBLIGATE THIS DIFFICULTY.

HOWEVER, IF EFFORTS TO OBTAIN ACCEPTANCE OF SAVING  
CLAUSE HAVE FAILED, DEPT COULD ACCEPT FORMULATION OF  
LANGUAGE AS DRAFTED IN REFTEL A WITH EXCEPTION OF PRO-  
PORTIONALITY LANGUAGE, " IF THEY DO NOT INVOLVE A USE  
OF FORCE BEYOND THAT WHICH IS REASONABLY NECESSARY FOR  
THE EFFECTIVE EXERCISE OF THE RIGHT OF SELF- DEFENSE."

THE PROBLEM IS THAT THE PHRASE CAN BE READ AS A NARROW  
CIRCUMSCRIPTION OF THE RIGHT OF SELF- DEFENSE BY IMPLYING  
THAT EACH INCIDENT MUST BE TREATED AS SELF- CONTAINED AND  
BYIMPLYING THAT EVEN SLIGHTLY MORE FORCE THAN HINDSIGHT  
SHOWS TO BE NECESSARY WOULD CONSTITUTE AGGRESSION. ANY  
ACCEPTABLE STANDARD OF PROPORTIONALITY MUST CLEARLY  
MAKE RELEVANT, NOT MERELY THE IMMEDIATE HOSTILE ACT, BUT  
ALSO THE HISTORY AND CONTEXT IN WHICH IT OCCURS, THE  
PERCEIVED THREAT, AND THE NEEDS OF DEFENSE AGAINST THAT  
THREAT. MOREOVER, IT SHOULD BE CLEAR THAT IT IS NOT ANY  
SUBSEQUENT EVALUATION OF EVENTS THAT IS RELEVANT, BUT  
RATHER THE FACTS AND THE THREAT AS THEY APPEARED AT THE  
TIME. IN OTHER WORDS, IN ORDER TO BECOME AGGRESSION,  
ACTIONS TAKEN IN SELF- DEFENSE MUST BE CLEARLY  
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DISPROPORTIONATE TO THE OVERALL NEEDS OF SELF- DEFENSE.  
WE CAN STIGMATIZE THE USE OF A MINOR INCIDENT AS A  
PRETEXT FOR ALL OUT WAR BUT WE MUST NOT, REPEAT NOT,  
STIGMATIZE ACTIONS WHICH MIGHT LATER BE SEEN AS MISTAKES IN  
JUDGMENT OR ACTIONS WHICH ARE NOT CLEARLY A DISPROPOR-  
TIONATE RESPONSE TO A SERIES OF HOSTILE ACTIONS AND THE  
THREAT THEY POSE BUT WHICH MIGHT BE DISPROPORTIONATE

TO THE IMMEDIATELY PREC

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\*\*\* Current Classification \*\*\* CONFIDENTIAL

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